IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 436 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAFABHAI BHAGUBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 436 of 1992

MS SADHANA SAGAR for Petitioner No. 1

MR HH PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE AKSHAY H.MEHTA)

1. The appellant who has been convicted under Section 302 of the Indian Penal Code (for short 'IPC') and has been sentenced to suffer RI for life by the Ld. Addl. City Sessions Judge, Ahmedabad City, Court No.3, vide judgment dated 13/4/1992 rendered in Sessions Case No. 30/1989, has approached this Court u/S. 374 (2) of the Code of Criminal Procedure (for short 'Cr.P.C.') for challenging the aforesaid orders of conviction and sentence.

2. According to the prosecution, the appellant was married to one Kankuben, daughter of Bhikhabhai Okhabhai. They were staying in a locality known as Ram Rahim Tekra, Baherampura, Ahmedabad. The relations between the appellant and Kankuben were not cordial. The appellant used to beat her. She was not even allowed to go to her parental home for attending any good occasion.

2.1. On 25/5/1988 brother of Kankuben, namely Jagmalbhai Bhikhabhai Okhabhai who was staying with his brother Ramjibhai in the vicinity of the house of the appellant, heard shouts of his sister in the late hours of the night while he was sleeping outside his house. He, therefore, immediately went to the house of his sister. When he reached there he saw that his sister was tied with rope around the neck and that was tied by his brother-in-law i.e. the present appellant. He, therefore, asked the appellant why he was trying to throttle his sister. The appellant, thereupon got enraged and he asked him to go away otherwise he would beat him (Jagmalbhai). The appellant also brought out knife and threatened Jagmalbhai with it. He, therefore, went to his uncle's place and told him about the incident. Jagmal's uncle i.e. Nathalal also lived in the said locality. Jagmal and his uncle thereafter went to the house of one Kalabhai and from there to the house of Kankuben. When they reached there, they saw Kankuben lying in lavatory. She was bleeding from the mouth. She appeared to be dead.

2.2. On seeing Kankuben dead, Jagmal's uncle Nathalal went to the Kagdapith Police Station and gave the FIR at about 5.00 O'clock in the morning of 26/5/1988. In the complaint he stated that he was informed by his nephew Jagmal that Kankuben had received burns and, therefore, he should come with him and when he reached the house of Kankuben, he saw that she was completely burnt and she was lying on the floor in lavatory. On receiving this information, the police commenced investigation and in

the course of the same, the police recorded statements of various persons conversant with the facts of the case, drew various panchnamas, arrested the appellant and also got the post mortem examination of the dead body of Kankuben done and at the end of the same submitted chargesheet in the Court of concerned Ld. Magistrate, who in turn committed the case to the Court of Sessions, as the offence u/S. 302 of the IPC is exclusively triable by the Court of Sessions. It may be noted here that in the course of the investigation statements of various persons were even recorded under the provisions of Section 164 of the Cr. P.C.

3. At the trial the Ld. Sessions Judge, Court No.1, framed charge against the appellant at Exh.2 on 24/2/1989 and read over the same to him. The appellant in response to that, denied his guilt and claimed to be tried.

3.1. At the trial, prosecution relied on the evidence of Jagmalbhai Bhikhabhai Okhabhai P.W.1 Exh. 18, Nathalal Harkhabhai P.W. 2 Exh.21, Kalabhai Bhikhabhai Okhabhai P.W.3 Exh.23, Bhikhabhai Okhabhai P.W.4 Exh. 25, Ramdulari Matasharan P.W.5 Exh.27, Amrutbhai Khatuji Damor P.W.6 Exh.28, Mulubhai Fogabhai P.W.7 Exh. 29, Chhangasing Vishramsing Thakur P.W.8 Exh.30 and Dr. Nayankumar Natvarlal Parikh P.W. 9 Exh. 34. Over and above this, the prosecution also relied on certain documentary evidence such as the First Information Report at Exh. 22, the report of Forensic Science Laboratory, the panchnamas of scene of offence as well as the inquest and the post mortem notes. At the end of the recording of the evidence the appellant was put all the circumstances appearing against him in the evidence to enable him to render any explanation thereto. His defence appears to be that of general denial. However, in answer to the last question he has stated that one Dungarbhai Panchabhai, who resides just opposite to the lavatory of the appellant's house, had come to their house and had broken open the door of the lavatory. He also expressed the desire to examine said Dungarbhai as defence witness and hence his evidence was recorded at Exh. 39.

4. At the end of the trial the Ld. Judge came to the conclusion that the prosecution was not able to prove that about one year prior to 26/5/1988 the appellant caused such physical and mental cruelty on Kankuben so as to inspire her to commit suicide. However, the Ld. Judge came to the conclusion that the prosecution had been successful enough to prove that on 26/5/1988 in the morning at about 3.00 O'clock in lane no. 23 house no.

343, Ram Rahim Nagar Tekra the appellant had intentionally caused fatal injuries to his wife Kankuben and thereby he had caused her death. The Ld. Judge, therefore, held the appellant guilty of committing murder of his wife and convicted him for offence u/S. 302 of the IPC and sentenced him to suffer RI for life vide judgment dated 13/4/1992.

5. At the hearing of this appeal Ms. Sadhna Sagar, the Ld. counsel appearing for the appellant, has submitted that the prosecution had not been able to prove the case against the appellant beyond any reasonable doubt and hence the appellant deserved to be acquitted. She has also submitted that this was a case of suicide and not murder, in as much as, the deceased had confined herself into the lavatory and then set herself ablaze and to save her defence witness Dungarbhai had to break open the door of the lavatory. According to her, in light of this fact the conviction of the appellant for offence u/S. 302 of the IPC was bad in law. She has further stated that when two sets of evidence are on record, the one favouring the appellant should be relied on. At the end she has submitted that this appeal deserves to be accepted and the appellant is required to be acquitted of the offence with which he is charged. As against that, Mr. H.H. Patel, Ld. APP appearing for the State has submitted that the prosecution has successfully established the fact that on the night between 25th and 26th at early hours the appellant had caused fatal injuries to his wife Kankuben and thereby caused her death and, therefore, he has been rightly convicted and sentenced by the Ld. trial Judge for committing the offence of murder u/S. 302 of the IPC. According to him, this appeal does not have any merit and it deserves to be dismissed.

5.1. Both the learned counsels have taken us through the entire record of the case and in support of their rival contentions we have also scrutinised and reappreciated the material evidence on which the reliance has been placed by both the sides.

6. In support of its case prosecution has firstly examined Jagmalbhai Bhikhabhai Okhabhai P.W.1 Exh.18. According to this witness, while he was sleeping outside his house on the night between 25th and 26th May, 1988 he heard shouts of his sister, whose house was situated nearby and therefore he went there and when he reached there he saw his brother in law i.e. the present appellant tying rope around neck of deceased Kankuben. He, therefore, requested him not to do so but the

appellant threatened him and asked him to go away and appellant also threatened him by showing knife that if he did not go away, he would be beaten. This witness therefore straight went to his uncle's place and informed his uncle Nathalal that the appellant was beating his sister Kankuben. Both of them thereafter went to the house of Kalabhai and from there to the house of Kankuben and saw that Kankuben was lying on floor inside the lavatory. This witness stood outside and did not go near the dead body. He has further stated that his statement was recorded by the police as well as by the Ld. Magistrate. He has further stated that so far the FIR is concerned, it was lodged by his uncle Nathalal at the police station.

6.1. In the cross-examination this witness has stated that there were 1500 to 2000 huts situated on Ram Rahim Tekra. According to this witness, he stayed near the house of Mafabhai, which fact was tried to be challenged unsuccessfully by the defence. He has further stated in the cross that when he reached to the house of his sister he had not noticed if the persons from neighbourhood had arrived there. He himself had not gone to call any person from the neighbourhood. He has further stated that he did not remember whether he had seen Dungarbhai Panchabhai Parmar at the house of his sister. However, he has stated that when he first reached the place, he saw that about 5 to 7 persons had already gathered there. In the cross-examination he has admitted that in the statement before the police he did not state that a rope was tied around the neck of his sister. He has further admitted that he also did not state before the police that appellant had tied the deceased with rope and he asked him why he was trying to throttle his sister. He has also admitted that he has not stated before the police that the appellant had threatened him by showing knife. He has, however, denied the suggestion made by the defence that the stopper and nuts of door of lavatory had become bent and the screws had come out from the fittings. In the cross-examination he has further stated that the appellant had received some injury on his right hand some time back, but he did not know whether the appellant was unable to bend his right hand. He has also denied the suggestion of the defence that the deceased had closed the door of the lavatory from inside and then she had committed suicide by pouring kerosene over her body and igniting it.

6.2. The prosecution has also placed heavy reliance on the evidence of Nathabhai Harkhabhai P.W. 2 Exh. 21. According to this witness, on the night of 26th May 1988

at about 3.00 O'clock his nephew Jagmalbhai had gone to call him as the appellant was beating Kankuben. This witness, therefore, after getting ready went to the house of Kankuben and saw that she was lying on the floor in the lavatory. In the cross-examination this witness has stated that he had seen the body of Kankuben which had sustained burn injuries and he accordingly went to the police station at about 5.00 O'clock and gave the FIR which is on record at Exh.22. In the further cross-examination this witness has stated that in the FIR he had not stated that Jagmal had told him that appellant was beating the deceased. He, however, also admitted that in the statement before the police he had not stated that around the neck of Kankuben rope was tied. The defence has not been able to elicit any fact from this witness, which could go in favour of the defence. In other words, defence has not been able to extract material of any importance against the prosecution.

6.3. The third witness relied on by the prosecution is Kalabhai Bhikhabhai Okhabhai P.W. 3 Exh. 23. In the examination in chief this witness has more or less stated the same facts that has already been stated by the earlier two witnesses. In the cross-examination he has stated that his sister was killed and she was burnt alive. The prosecution has also examined one Ramdulari Matasharan P.W.5 Exh. 27. But on scrutiny we find that her evidence is not of much help to either side and hence we do not discuss the same here.

6.4. Chhagasing Vishramsing Thakur P.W.8 Exh. 30 is the Investigating Officer. He has stated regarding the investigation conducted by him in the present crime. In the cross-examination defence has not been able to bring out any material which would favour it. He has denied that during the course of investigation he had come to know that the deceased had committed suicide by closing herself in the lavatory.

6.5. So far the defence is concerned, it has also examined one Dungarbhai Panchabhai who resided just opposite to the lavatory of appellant. According to this witness, on the night of incident he heard shouts seeking help on account of fire. When he went to the house of the appellant, he did not find any one in the house. He could only see the flame and smoke in the lavatory. He, therefore, broke open the door and thereafter when the lady fell down on the ground, he went away from the place and did not inform any one about the incident.

7. Considering the oral evidence on record, we find

that so far prosecution is concerned, its witnesses have remained consistent and by and large they have given the straight forward version of the incident. Their evidence clearly proves that on the night of 25th and 26th May 1988 at about 3.00 O'clock the appellant had caused fatal injuries to the deceased and after trying to throttle her by tying nylon as well as coir rope around her neck, he burnt her. So far the burning part is concerned, there is no eye witness and the case of the prosecution therefore, solely rests on circumstantial evidence. It is well settled principle of law that in the case of circumstantial evidence the prosecution has to prove each link of the chain in such a manner that the entire chain pointing to the establishing guilt of the accused is complete and no link is missing therein. In other words, the prosecution has to prove that all the circumstances appearing on record lead to only one hypothesis i.e. the guilt of the accused and there is nothing on record which can be said to be compatible with the innocence of the accused. In the instant case, undoubtedly there are reliable circumstances that lead us to believe that it is the appellant who is the real culprit. This is so because immediately before the incident of burning he was seen by witness Jagmal beating the deceased and not only that he had tied the nylon thread as well as coir rope around her neck and he was about to cause her death by hanging. When Jagmal requested him not to do so, he asked him to go away and he also brought out knife and threatened him that if he (Jagmal) remained there any more, he would kill him. As a result of this, Jagmal got scared and he straightly went away and informed his uncle about the incident. When Jagmal and Nathalal reached the house of appellant, there is some time gap in between i.e. the time at which the appellant was first seen by the witness Jagmal and later on when he reached the house of the appellant in the company of his uncle Nathalal. In the meanwhile the appellant has every chance to set the deceased ablaze to cause her death or with a view to show that she committed suicide and he successfully availed of this chance. If in light of this, the medical evidence led by the prosecution in the form of Dr. Nayankumar N. Parikh P.W.9 Exh. 34 is seen, it becomes very clear that the deceased had sustained ligature marks on her neck with the coir and nylon rope and a sari were tied around the neck of deceased and that the carbon particles were found from lungs and wind pipe. According to this witness, the deceased had sustained 2nd and 3rd degree burns on the frontal side of her body. Both these injuries, namely the burn injuries as well as the injuries caused by means of rope, etc. were antemortem. It is, therefore, very clear that after unsuccessful

attempt to throttle Kankuben with the aid of rope and sari or with a view to make a show that she had committed suicide by burning herself, the appellant had set her ablaze and had placed in the lavatory in such a manner that viewer can suspect it to be a case of suicide. Ms. Sagar has submitted that looking to the fact that the stopper had bent and screws had come out from the door it clearly shows that some body had tried to break open the doors of lavatory which were bolted from inside. Moreover, she has further tried to suggest that the lady had closed herself inside the lavatory and had set fire to her body for committing suicide. However, this does not appear to be so because the panchnama of the lavatory clearly shows that there is no signs of fire having taken place inside the lavatory. There are no marks of blackening which would normally be there if a fire had taken place inside the lavatory. Moreover, the witness who has been examined by the defence to support this version has merely stated that on seeing the fire in the lavatory of the appellant, he went inside the house, broke open the doors of the lavatory and when the lady fell on the ground while she was still burning he went away. He has further stated that at that time he did not see the appellant in the house and only his mother was seen and when he went out he did not talk about the incident to any one. The evidence of this witness however does not inspire confidence because firstly in the examination in chief he has stated that he had not noticed who the lady was and it was later learnt by him that it was Kankuben, secondly that when he went inside the house, he did not notice the appellant and only found his mother to be there. This viewed in light of the further statement of the appellant recorded u/S. 313 of the Cr.P.C. wherein he clearly says that Dungarbhai Panchabhai on seeing the fire from the lavatory came there and he broke open the door of the lavatory, if the appellant had seen him doing so, naturally Dungarbhai would have also noticed him there, but he denies having seen the appellant there. Moreover, the natural conduct on the part of Dungarbhai would be to seek help from the neighbourhood to first extinguish the fire and thereafter to remove the injured to the hospital for treatment. He would also try to find out where the appellant was. However, nothing of the sort has been done by him. He says that he simply went away and did not talk to any one about the incident. His evidence if viewed in the light of the panchnama of lavatory also, it does not inspire confidence since no marks caused by fire were noticed in the lavatory by the Panchas.

7.1. Thus the appellant has tried to make an

unsuccessful attempt to show that the deceased had committed suicide by closing herself in the lavatory. For the reasons already stated above, we find that it is not at all a case for suicide.

8. The next question that would be, who could be the author of this crime and the answer is not very difficult. So far the actual assault on the lady by appellant is concerned, it has already been noticed by Jagmal that when he went to the house of deceased. He had seen the appellant tying rope around neck of the deceased; meaning thereby that the appellant wanted to kill her by hanging. When Jagmal returned in the company of his uncle, they found that the lady was already lying on the floor in burnt condition. It can, therefore, well be inferred that immediately after throttling the appellant had set the body on fire and thereafter placed the body in lavatory so as to make a show that she had committed suicide. Since we have already stated that so far defence version that she had committed suicide inside lavatory is not believable, there is another factor which can also be taken into consideration and that is in the trial Court the appellant was charged with an offence u/S. 498 A of the IPC on the ground that he had been harassing Kankuben for the last one year prior to the date of incident. The Ld. trial Judge has however held that the prosecution had failed to prove it and had acquitted him from that charge. Meaning thereby that if the deceased was not caused any harassment by the appellant, there was no reason for her to commit suicide. There is nothing on record to show that she had any motivating factor to take this extreme step and to end her life in such a fashion. When the suicide is ruled out in light of the fact that soon at the arrival of witness Jagmal at the house of appellant, he had seen appellant tying rope around the neck of Kankuben shows that at that point of time the appellant was already in the process of causing of death by hanging. When Jagmal and Nathalal returned to the house of the appellant, they found the deceased in burnt condition lying on the floor. The appellant is also found to be there. The very fact that even the incident of burning had taken place inside the house of the appellant and that too in his presence and when it is not case of suicide, no other inference can be drawn but that it was the appellant and appellant alone who had caused the death of Kankuben. In our opinion, the prosecution has been able to establish each and every link with a view to complete the chain of circumstantial evidence leading to the guilt of the appellant. We, therefore, have no hesitation to hold that the conclusion reached by the trial Court is just,

proper and legal and there is no need to disturb the same. In the result, we find no merit in this appeal and the same is hereby dismissed.

Muddamal to be disposed of in terms of the directions given by the Ld. trial Judge in the impugned judgment.

[K.R. VAYS, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.